



May 13, 2013 Motion

CASE 5:11-cr-00602 GTS

(17 pages total)

Joseph Jenkins

7445 County House Rd
Auburn, NY 13021

US District Court

PO Box 7396

Syracuse, NY 13261

RE: US vs Jenkins

US Attorney - Thomson

100 South Clinton Street

Syracuse, NY 13261-7198

Defendant asks the court for immediate relief and remedy(s) to the following issues. I cite Unjustified delays, improper conduct by police and lawyers, as well as US Attorney, Dating back as far as May 25, 2009. Defense seeks dismissal of all charges or immediate hearings on the following issues.

I. Background

I refer to previous filings made April 17, April 28 and May 5, 2013. These filings are mainly to request discovery that the government has had in its possession for years, documented by their paperwork.

I believe there are extreme measures being taken to cover up Conspiracies on behalf of police agencies, In US and Canada which points to an International Conspiracy to improperly shift jurisdiction of proceedings and tamper with Original Evidence from previous Canadian court proceedings. These attempts to withhold paperwork and physical evidence have caused unexcusable delays, all the time during my confinement, which has led to duress and life altering changes, being denied release for allegations unfounded and unsupported to date of happenings in a foreign jurisdiction.

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II Statement of Facts, according to dates. This information will be verified by requested discovery, some paperwork exists already.

May 24th 2009 - I took my work truck with a large trailer needed for recreational equipment to the port of Lansdowne to seek entry to Canada. I was early and I was one of the only vehicles there. Upon pulling up to the guard booth the guard was already writing out (an) a secondary inspection ticket. I was directed into inspection area, three officers immediately converged on the vehicle. After a long invasive and intrusive search which included a briefcase with a ~~work~~ computer. I was arrested for possession of child pornography, never being given any further details or where found.

May 25th 2009 - According to department of homeland security paperwork through agencies in Ottawa Canada, CBSA (Canada border security agency), OPP (Ontario provincial police), ICE (Immigration Customs Enforcement) DHS (Department of Homeland security) Collateral Requests of investigative findings began between the latter mentioned agencies, concerning myself. Requests also were sent to FBI Syracuse to conduct an investigation in the United States. DHS reported it would continue investigations.

May 26th 2009 - I was released on bail in Brockville, Ont after retaining a lawyer, Steven Edgley of Brockville, Ont, CA. Upon pulling up to the first US agent (Guard Booth), I was immediately detained, searched, questioned and asked to waive constitutional rights and eventually released, much later.

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Attorney Edgley appeared on my behalf on/for court dates June 19, July 3, October 30, November 27, 2009 and again on January 8, 2010 all court dates were adjourned to lack of any discovery from Crown Attorney.

March 3, 2010 - A letter was sent from Edgley to attorney

Timothy Buckley who was hired as a go between he is a Geneva area attorney (local). This letter outlined options and included a very preliminary report on forensic exams and investigations. It was favorable for the time, no child pornography was accessible on either computer and showed no indication it was acquired, viewed, transmitted, emailed or anything of the kind, it was decided to wait for the full report.

↑ February 5, 2010 was a prior court date, no discovery was made but a trial date was set by Edgley to force discovery and to set up a speedy trial motion. September 13, 2010 was first available date, six months away.

July 28, 2010 - Edgley sent a letter to Crown Attorney in Canada. Stated no discovery was made for Sept 13 upcoming court date, time was needed for defense examination, preparation.

September 2, 2010 - Edgley said no discovery was made but and crown was to forfeit proceeding. Asked me to attend court on September 13, 2010. Request to Buckley in writing (fax)

September 10, 2010 - DITS issued investigative findings between CSBA, OPP and discussions on August 31, 2010 about my trial in Brockville CA. That the investigation would continue. Intern report originally assigned 052609 report details CSBA, concerning myself.

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September 13, 2010 - I traveled to Brockville Ont, CA to attend court as requested by my attorney. Session began in the afternoon. Edgley prepared a ~~dis~~sm motion to dismiss the case for discovery violations / Time. Judge admitted on record that September 13, 2010 was way too far out/off from February 5th to set a court date it should have been much sooner. Expert Computer guy from Toronto attended and brought computer equipment. He said that the forensic exam was less than half complete and made excuses for over an hour about why and admitted they failed to meet full discovery requirements and time ~~take~~ lines (16 months into an investigation) Cross examination discussed chain of custody and timeline, Expert admitted this was a small case and was given no priority. Court was adjourned. Judge to rule on the matter October 18, 2010. ① Upon returning to US. No further discovery or forensic examination was submitted, I was not told to attend on October 18, 2010 this is confirmed in attorney to attorney paperwork.

October 18, 2010 - Edgley attended court on my behalf an adjournment or dismissal of charges was expected. He called me later in the day and said the judge decided to continue anyways because Crown assembled officers, 'a trick'.

A warrant was issued for my arrest in Canada. Attorney said it was subject to extradition, was not serious enough for Canada to attempt, I would not be arrested unless attending Canada without clearing charges.

① I was once again detained, questioned, searched, harassed by DITS

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III Issues of Joint Investigations; See Conspiracy Argument (II)

There is a motion (several actually) for production of all materials associated with the governments involvement in this collateral investigation of a US citizen. Including interagency, international 'Flagging' by computer or other means. I refer to my May 5, 2013 submissions and before.

This is to be used in conjunction with existing paperwork dating to 5-26-09 detailing investigations that began 5-25-09.

I have witnesses of immediate detension on 5-26-09.

(forthcoming) Report/statement from a Canadian Attorney Edgley on issues relating to another physical intervention by DHS on 9-13-10.

Depending on the outcome of a May 5, 2013 motion and previous requests. The defense feels there is currently enough evidence to ask the court to apply US constitutional rights to the matter at hand.

Also to look into the government denials of a joint investigation in response to a defense motion in July 2012.

Defense sights paperwork trails and physical interference since the day the defendant was released from Canada in May 2009, as sufficient cause to apply rights such as: Speedy Trial; Due Process; 4th amendment rights to unlawful search and seizure, unreasonable government intrusion, to all Canadian Proceedings, US government intrusion before and after October 18, 2010, interfering with due process in Canadian Proceedings.

The defense believes there is more than enough cause to warrant dismissal of US proceedings for constitutional rights violations.

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IV

Improper Forfeiture of evidence; Improper Seizure of evidence;
Police and Federal agents acted beyond their authority; Government
had not properly conferred authority as required by treaty.

The US Extradition Treaty with Canada clearly requires ~~Executive~~
Executive, Judicial or Diplomatic authority to confirm and consult to
decide issues regarding purposes of prosecution and extradition
between the two countries.

The Canadians clearly decided to prosecute the case and the
evidence almost four years ago. The case remains on the Canadians
Provincial Docket as trial ready.

The defense argues that since the Canadians decided to prosecute
and saw the case to trial, such as it was, presented, after sixteen
months, less than half a forensic analysis, presented at a trial
scheduled six months in advance and discovery requirements not met, they
have the obligation to follow through with due process. In this case
it would require a proper extradition hearing to settle obvious
investigation issues with the physical evidence and proper reports
being issued to comply with discovery requirements for trial.

OPP completely bumbled the investigation and ~~sent~~ submitted
incomplete reports days before a trial scheduled six months in
advance. According to DITS Paperwork, OPP investigator Vinette who
was involved from the start - was well aware, OPP investigator
Wohlert who was also in-charge from the start and lost most
of the evidence should have been aware as well.

More disturbingly is the judge let the proceeding continue with
an incomplete investigation and without Canadas full discovery requirement.

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I the defendant was treated improperly by the Canadians, I'm not sure of the Due Process under Canadian Law, but believed I was entitled to asylum in the US subject to proper extradition proceedings. I was told this by the Canadian Lawyer, I was subject to a formal proceeding and would not be arrested unless trying to attend Canada without clearing the charges, previously.

According to the Warrant to search the physical evidence that Wohlert obtained, returned, 'Report to a justice' Signed and dated July 3, 2009. Wohlert was to 'retain seized items' until the 'trial was completed.' The trial has obviously not been completed to date, Edgley did not inform me of further action.

The defense sees that the evidence was held at a judicial level for trial. I see no where, where Wohlert sought proper release from the judge to forfeit this evidence that is being held for an open trial, that's led to two trials at once.

This was an improper forfeiture of evidence by Wohlert and constitutes all of an illegal seizure by DHS who took possession without a warrant, neither had proper authority to forfeit or seize the evidence, or what remained of it, anyways.

The paperwork that supposedly gave Willard cause to 'seize' the evidence that Wohlert 'turned over' to him, has not been provided to the defense two and a half years later. It was promptly provided to DHS myers on 10-21-10, never seen again.

I further argue that Wohlert and Willard are not executive authority, both are low level investigators that search vehicles at the border. The case was submitted to trial and was quite over their heads, held by a judge for trial. (Canadian)

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I argue that this 'turn over' of evidence was an improper seizure of property without proper authority and was equal to an out the back door, or under the table transaction with the direct intent to bypass due process. (Of an American Citizen) This has led to violations of many Constitutional rights, besides several due process violations, right to fair trial, Proper Extradition proceedings. Fourth Amendment rights to be free of unlawful search and seizure, the whole matter from the start constitutes an unreasonable government intrusion, without just cause.

This case was obviously a collaboration from the start, a joint investigation and a scheme to improperly shift proceedings across borders to a jurisdiction with harsh penalties without proper proceedings. The US government should protect its citizens from wrong doing in other countries when the citizen is within it's borders and entitled to constitutional protections and asylum.

This is either a conspiracy from day one or an attempt for a Canadian Investigator to somehow redeem himself for a completely botched and mishandled investigation in which he lost evidence and failed to complete an investigation for trial. He turned over what was left of two years of bumbling to DHS, improperly seeking redemption, or ^{it was} the final part of an improper conspiracy.

The defendant asks the court to see this whole transaction and case for exactly what it was, nothing more than improper scheming and conduct from police that was an attempt to ~~bypass~~ bypass constitutional rights, improperly and without due process.

I ask the court to dismiss the case immediately.

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T Defense alleges that police agencies engaged in an illegal international conspiracy to improperly shift jurisdiction of the case avoiding due process, violating the defendants constitutional rights, engaging in further conspiracies to cover up actions of physical detainment and joint investigations.

Beginning May 25th 2009 Investigating agencies collaborated efforts to purposely delay due process in Canadian proceedings while american agencies purposely interfered and physically interfered with ~~the~~ my traveling to and from Canadian proceedings in an attempt to harass, bully and discourage further attendance of Canadian proceedings, and sabotage proceedings.

Paperwork trials to date indicated US border agents / DHS knew of my court dates ahead of time and were waiting and plotting to ~~not~~ intercept me upon return state side. 9-10-10 paperwork from DHS details communications with OPP

Investigator Vinette on August 31, 2010. Vinette informed them of my up coming trial date on September 13, 2010 two weeks away. Vinette was involved in the matter since May 24, 2009 as well as Wohlert both investigators from OPP who was also handling the forensic investigation into the case. Vinette seems to have known of the court date ahead of time as she informed DHS, however, OPP had only completed less than half of the forensic exam and had not made trial disclosure as of August 31, 2010. (To my knowledge, why I seek Sept 13, 2010 Transcripts) I am sure full disclosure had to be made 14 days in advance in Canada, It was not met.

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For all of the discussion about my upcoming court date between all of these agencies, why was the forensic exam report submitted less than half complete for the trial scheduled September 13th 2010 by OPP when they knew of the upcoming trial six months ahead of time and had sixteen months to complete it?

I've stated to the best of my knowledge what I know of the two Canadian Court dates. I have sought the transcripts for some time to confirm this, with help from family we have been unable to obtain them. I believe the Canadian lawyer is looking into it now, recently obtained his new information, he moved.

Whatever happened October 18, 2010 which resulted in a warrant, the paperwork and forensic reports that my Canadian lawyer could not obtain, even half complete until days before September 13, 2010, were almost instantly provided to DHS Meyers strangely enough the next business day, in Buffalo NY.

When I attended court in Brockville ON on the 13th of September I heard hours worth of excuses why the forensic reports were not complete, even one that the ^{OPP} investigator did not know the case was going to trial, despite all of the paperwork circulating interagency and across the border, relating to it.

I myself have not seen these reports four years later or any even complete examination on any physical evidence, though three quarters of it seems to be either missing or damaged.

Further paperwork indicates Willard of DHS received (8) of (15) items of original seizure, only (7) were bagged into evidence which counts (1) inoperable computer seized without a

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power supply. So of the (15) items seized by CBSA between Wohlert and Willard (6) are present for examination after Willard lost a camera card and possibly a power supply.

After this 'seizure' of questionable circumstances which included incomplete, unpreserved and inoperable evidence (see my other motions) The dates suddenly change on all DHS paperwork from date assigned 5-26-09 to 3-7-11.

When Willard took possession of this well preserved evidence from OPP Wohlert, Wohlert stated that "Jenkins had chosen not to return to Canada to face Justice." This from the man who personally bumbled the Canadian Police investigation and lost evidence, with Willards help.

Willard then proceeds with his investigation after logging in what evidence remained at 'April 1, 2011 at exactly twelve noon.' Investigators proceeded to provide their own analysis of this incomplete, inoperable and unpreserved evidence. Now there is suddenly material there that was not present years before, all the while suppressing the 10-21-10 Forensic reports used to start their own investigation! To date this is not available although it offers evidence against their indictment, proves Tampering.

DHS and Prosecutors never indicated their involvement prior to 10-21-10 and denied joint investigations to date, although paper-work clearly shows involvement of DHS and PAPC syracuse from start.

(DHS)
(5-26-09) -> The defendant sees this as cause for dismissal of all charges, it was intentional deception and scheming to violate Constitutional rights by conspiring with foreign police and US prosecution, this was all done with obvious mal-intent.

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VI DHS agents seized incomplete, inoperable and unpreserved evidence with a highly faulted chain of custody, from OPP. Defense believes this warrants dismissal of charges resulting from this evidence. Evidence originally seized by CBSA turned over to OPP and later to DHS was mishandled by Canadians and later mishandled by DHS.

On May 24th 2009, CBSA questionably searched and seized (15 items)- Toshiba computer (78175808W), Compaq computer (CNF3362GPN), (3) USB sticks (no serial numbers), (6) CD's (no distinguishable traits, one Compaq), (1) wireless Notebook card (15822C9302697), Olympus Camera (408342909), Olympus Picture Card (MDK16P31K5710655X30421m70) Cellphone (no serial). This all according to an evidence seizure receipt by CBSA not signed but dated 5-24-2009. (15) items total.

It is reported that these items disposition, Queens Warehouse. Not itemized, no value, not signed no date, according to Statement of goods seized.

It is reported nowhere where CBSA started a proper chain of custody - nor is it clear what happened to the items after 5-24-2009. (Wohler^{16P}) never signed for possession from CBSA.

Detective Kip Wohler^{16P} reportedly applied for a search warrant in Toronto, Ont on May 27, 2009 - This authorized him to execute and seize property (11 items!) and secure them in the Electronic Crime Section's vault on May 28, 2009 for further examination, and to retain these items, until court matter is complete!

Wohler reported seizing the items May 28, 2009 and storing them at Orillia, Ont on the search warrant, from CBSA.

To try and make a long story short as possible these

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seized items were never together again after 5-24-09 or properly counted or accounted for, even to date. (Today) Wohler + reported seizing items in Lansdowne, Ont on 5-28-09 although there is no proof he was physically there. Paperwork provided with the physical evidence obtained by DHS (Willard) contained eight items on April 1, 2011. Willard logged in seven items to US evidence, he seems to have lost a camera card, in the transaction on (line #3), never reported. This OPP property report with 8 items was ~~received~~ received/ started by Wohler on 5-24-09 before he had a warrant and officially 'seized' the items from (BSA), it is not clear what happened to the remaining items and where they are to date.

Between 5-24 and 5-28-09 the property was reported in Lansdowne, Dixonsview and Orillia, Ontario - between three cities and property reports. Not one date matches another and there is no record of anyone signing for it on two Brockville court dates, where it attended court. There are 15 to 20 errors in the chain of custody and it's not clear where it was stored for 23 months it was in Canadian possession. (Wohler's Possession)

(7) of the (8) items DHS took possession of out of the original (15) - One item the Compaq Computer (DHS- 8/10/11 - Examination Report) DHS Braisted says, "the laptop battery was discharged, and no power adapter was included in the seizure." This means to the defense it was not operable when seized and is still not operable to date. From (seven) items down from the original (fifteen) seized four years into the proceeding and over a year and a half of my detriment (six) appear to remain for inspection.

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At one point the evidence, some of it anyways, appeared to undergo a partial forensic exam by Canadian CSES (electronic crimes section) in Duxbury, Ont, CA. Some of this was explained on September 13, 2010 trial date which should be explained by missing discovery Transcripts, I've requested.

The forensic exam provided conveniently and promptly by det. Wohlert one business day after trial proceedings on October 18 2010 to meyers of DHS in Buffalo NY has been requested but is not forthcoming by the government. (used to initiate US proceedings)

Strangely enough the government was kind enough to provide their own version which was a whole five pages, compared to one I had seen by Canadians which was more ~~than~~ comprehensive and even partially complete was some twenty pages at least. The governments version strangely, shows completely different results and items that simply were not there years ago, on computers that were clean.

The defense has requested these two different analysis countless times and government refuses to provide them. (May 5th 2013 Requests)

The defense requests an immediate hearing citing missing, inoperable and unpreserved evidence with a faulty chain of custody that is really worthless. There are (9) items either missing or inoperable.

A complete accounting of the evidence is required-immediately- with the burden of proof placed on the prosecutor to prove the integrity of the evidence, provide missing items, including the power supply to make the computer operable, for examination.

After being put through four years of dealing with lawyers, courts, incompetent police and a year and seven months detention in the US for something that happened

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in another country four years ago that involved a bumbled police investigation and interference from the US government from day one - I will not be taken to trial on the left over garbage remaining that the Police in both countries have managed to retain after four years.

The defense demands immediate production and accounting for all evidence. 'Selected' items will not due. Evidence is not operational, not complete and available for inspection by defense or a computer engineer, after a seventeen month detainment period.

Canadians will explain where every item was found in the search, the defense requires all evidence, it was in a work environment and subject to multiple users all has to be examined and accounted for, and operational as it was when seized, and of course complete, preserved and functional.

Government needs to provide the paperwork from both examinations and account for the differences. Wohler needs to account for missing items and so does Willard-evidence tampering is not acceptable, neither is loss of property whether it be intentional or otherwise, meaning due to incompetence, trials cannot be held only on what the police have decided they want to use of items seized. All of the seized items need to be provided and explained why they were seized and where they were found, an analysis need to be done and the items properly accounted for after four years, two in another country handled by various foreign police agencies, not properly I might add, and an improper forfeiture of evidence in which a camera card and computer power supply were additionally lost years later.

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III.

Summary

Citing a wide range of issues dating back years from the current date. Defendant asks the court to consider the major issues brought about by this motion four years into the case and nineteen months into my US detension without possible release, that cannot seem to be negotiated.

Issues that include basic paper work relating to computer analysis, an obvious joint investigation that went unreported and past previous ~~unreported~~ council, denied by the government itself until I managed to obtain paperwork, myself, almost a year later. Physical intervention by DHS that went unreported. Six items of physical evidence remaining out of fifteen original that went missing on both sides of the border, none of which can be accounted for. Improper forfeiture of evidence by an unauthorized police detective who failed to complete an investigation and gave away evidence held by a judge for trial that is incomplete, as well as he mishandled evidence.

I'm just scratching the surface here, I'm not sure how much proof, or how much more anyways the court needs to see a violation of constitutional rights, due process and a speedy trial clock that needs to be reset back to 5-24-09.

This constitutes an unreasonable government intrusion from the start with physical intervention by US police into a matter that should not have concerned them, at least until due process was seen in Canada. Canada should have attempted extradition as they argumentatively saw the case to trial.

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The Canadian warrant for my arrest happened after scheming police officers sought to sabotage my Canadian court proceeding, which will be proven when more paperwork becomes available. They then acted beyond their authority and improperly shifted evidence from an open court proceeding violating due process which the extradition treaty should prevent, which brings in 4th amendment rights to an improper seizure of evidence by DHS and all around constitutes an unreasonable government intrusion into Canadian court proceedings from the onset back in May 26, 2009.

VIII Conclusion

The defendant asks the court to consider all of the issues presented and present relief in the form of dismissal of all charges, and/or release of the defendant from unwarranted custody and/or the court conduct immediate hearings with all canadians present to resolve the issues, all of which warrant dismissal of charges separately. Together and all things (issues) considered there is no remedy more appropriate, than dismissal.

- I, Joseph Jenkins, certify all of the above is true, I respectfully submit this motion for relief, but do so under extreme prejudice. I have done so confined to a county jail with no legal resources. It has been done to the best of my abilities under the circumstances, I believe it deserves carefull consideration and immediate action, given the current circumstances, delays, lacking paperwork and physical evidence so far into a proceeding. Joseph Jenkins



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